
LAW

Protecting bankruptcy claim requires fundamental knowledge

An economic plague is ravaging America's businesses. Born from greed and stupidity, it is bankrupting thousands of businesses each month.

According to Bloomberg.com, more than 18,000 businesses filed for bankruptcy in just the first quarter of 2008. That was a 50 percent rise in bankruptcy filings from last year. And that number is going up.

If you have a claim against a business that files for bankruptcy, you must pursue your claim in the bankruptcy proceeding. You will need to have some general knowledge of the process and how to pursue your claim. This article will give you some understanding of the different proceedings available under bankruptcy law and how to assert a claim in those proceedings.

There are three basic types of bankruptcy proceedings:

Chapter 7

A Chapter 7 proceeding is where businesses go to die. This is a proceeding for failed businesses that have ceased operations. A Chapter 7 bankruptcy is nothing more than the liquidation of the business. To carry out the liquidation, the bankruptcy court will appoint a trustee to sell the available assets of the business. Once done, the trustee will distribute the net sale proceeds among the creditors. Chapter 7 is bad news for creditors. More often than not, unsecured creditors will be paid very little on their claims. In many cases, they will get nothing.

Chapter 11

Chapter 11 is for businesses that want to live. Corporate businesses use the process as a means to restructure their debt. In a Chapter 11 proceeding, a business will "reorganize" by reducing its total debt to an amount equal to the "going concern" value of the business. A reorganization plan is submitted, stating the exact amount to be paid to each creditor. Since the business will pay its debts based on the going-concern value, unsecured creditors will typically be paid a lot more on their claims



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than in a Chapter 7.

Chapter 13

A Chapter 13 proceeding — a simplified version of a Chapter 11 — allows someone the opportunity to restructure debt through a similar reorganization process. Like a Chapter 11, the individual will file a plan stating the exact amount to be paid to each creditor. However, in a Chapter 13, the debt restructure is based on the value of the person's assets. In almost every case, this value will be less than a going-concern value. Nevertheless, unsecured creditors will still fare better in a Chapter 13 proceeding than in a Chapter 7.

Filing a claim

To initiate a bankruptcy proceeding, a business must file a petition identifying each creditor and the amount owed to each creditor. Once the petition is filed, a notice of the bankruptcy will be mailed to all the creditors named in the petition.

In asset cases, the bankruptcy court will enter an order that sets up a time period for filing claims. A copy of this order will be sent to each creditor, accompanied by a "proof of claim" form and instructions on how to fill out the form. The form is not complicated and can be filled out with little effort.

If a creditor wishes to pursue a Chap-

ter 7 or 13 claim, he or she must fill out the proof of claim form, and file the completed form within the time period specified in the order. However, a creditor is not required to file a proof of claim in a Chapter 11 unless the creditor's claim is improperly scheduled in the Chapter 11 petition. In such cases, the creditor must file a proof of claim to correct the inaccuracy contained in the petition. The creditor must file the completed proof of claim form within the time period specified under the order. If the creditor fails to timely file in a Chapter 7 and 13 proceeding, the creditor's claim will be lost. But filing too late in a Chapter 11 proceeding means the creditor will be stuck with the claim that is scheduled in the petition. Accordingly, a creditor should file the proof of claim as soon as possible. Information: www.uscourts.gov/bankruptcycourts/bankbasics04606.pdf. Tom Keuler has been a partner in Paducah's Denton & Keuler law firm for more than 30 years. He represents many of the firm's commercial, industrial and banking clients, and has been special counsel to the City of Paducah and counsel to the Municipal Commission in Frankfort.